

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
18 EDC 01748

<p>██████ by parent or guardian ██████ Petitioner,</p> <p>v.</p> <p>Pitt County Pitt County Schools Board of Education Respondent.</p>	<p>FINAL DECISION</p>
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Upon consideration of the file which includes, but is not limited to, the Respondent's Motion to Strike, Notice of Voluntary Dismissal and Order Granting Respondent's Motion to Strike, the Undersigned *sua sponte* dismisses the above referenced case based on the following:

1. On March 21, 2018, Petitioners filed, *pro se*, a contested case petition ("Original Petition") asserting that Respondent's regular education teachers failed to implement the accommodations in ██████ IEP.
2. A Resolution Meeting was held on April 2, 2018, during which the parties resolved the issues raised in the Original Petition. Normally Petitioners would have only 3 days to void the agreement, but the parties agreed that Petitioners had until April 12, 2018, to void the Resolution Agreement.
3. On April 6, 2018, Petitioner ██████ notified Respondent, in writing, of her intent to void the Resolution Agreement. On the same day, a Notice of Appearance was filed by Petitioner's legal counsel as well as an Amended Petition.
4. Petitioners did not have consent from Respondent or seek leave from this Tribunal to amend their Petition pursuant to 20 U.S.C. § 1415(c)(2)(E)(i)(I&II). Respondent moved to strike the Amended Petition on April 9, 2018, and Petitioners timely responded to the motion on April 13, 2018.
5. Subsequently, the parties jointly stipulated to implement the Resolution Agreement at an IEP meeting currently scheduled for April 25, 2018, hereby revoking by stipulation Petitioners' revocation of the Resolution Agreement. (*See Joint Stipulations dated April 13, 2018*)

6. In their Joint Stipulations, Respondent did not consent to Petitioners' amendment of the Original Petition. Respondent has not subsequently agreed to the amendment, nor is there an order granting leave to amend.

7. Also on April 13, 2018, pursuant to the parties Joint Stipulations, Petitioners' filed a Notice of Voluntary Dismissal with prejudice of the issues raised in the Original Petition.

8. Immediately, thereafter, Respondent filed a Reply to Petitioners' response to the motion to strike the Amended Petition.

9. All of this occurred before the Undersigned's ruling on Respondent's Motion to Strike which was issued on April 19, 2018.

10. The Undersigned granted Respondent's Motion to Strike the Amended Petition because Petitioner did not have consent from Respondent or leave from this Tribunal to file an Amended Petition. Moreover, with the issues from the Original Petition dismissed with prejudice, there was no petition left to amend.

11. At no time during this process did Respondent consent to the amendment of the Original Petition or Petitioners file for leave to amend the Original Petition. Now, it is too late.

12. There is no dispute of controversy existing between the parties at this time; therefore, the petition is moot and should be dismissed. *See Messer v. Town of Chapel Hill*, 346 N.C. 259, 260, 485 S.E.2d 269, 270 (1997), *see also, In re Peoples*, 296 N.C. 109, 147, 250 S.E.2d 890, 912, *cert. denied*, 422 U.S. 929, 99 S.Ct 2859(1978) ("whenever, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed...").

13. The Office of Administrative Hearings lacks subject matter jurisdiction over moot claims and these claims must be dismissed.

WHEREFORE, it appears to the Undersigned that there are no issues to be resolved in this matter and the contested case is moot. Pursuant to Rule 12(b)(6), it is hereby **ORDERED** that this contested case is **DISMISSED WITH PREJUDICE**.

NOTICE OF APPEAL

In accordance with the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this dismissal.

Under North Carolina's Education of Children with Disabilities laws (N.C.G.S. §§ 115C-106.1 *et seq.*) and particularly N.C.G.S. § 115C-109.9, "any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may **appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board** under G.S. 115C-107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section."

Inquiries regarding the State Board's designee, further notices and/or additional timelines should be directed to the Exceptional Children Division of the North Carolina Department of Public Instruction, Raleigh, North Carolina prior to the required close of the appeal filing period.

IT IS SO ORDERED.

This the 19th day of April, 2018.



Stacey Bice Bawtinheimer
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 19th day of April, 2018.



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